

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
IN RE: :  
FOSAMAX PRODUCTS LIABILITY LITIGATION : 06 MD 1789 (JFK)  
----- :  
This document relates to all actions. : **ORDER**  
----- X

JOHN F. KEENAN, United States District Judge:

The fourth and fifth bellwether cases in this multidistrict litigation, Secrest v. Merck & Co., Inc., No. 06 Civ. 6292, and Hester v. Merck & Co., Inc., No. 06 Civ. 9450, are scheduled to go to trial on March 14, 2011, and May 9, 2011, respectively.

The plaintiffs in this MDL claim that Fosamax, a bisphosphonate drug manufactured by defendant Merck Sharp & Dohme Corp. ("Merck"), causes a condition known as osteonecrosis of the jaw ("ONJ"). The FDA first approved Fosamax for the treatment of osteoporosis on September 29, 1995. On July 15, 2005, Merck updated the Fosamax label to include a warning that cases of ONJ had been observed in bisphosphonate users. The bellwether cases selected for trial so far have involved use of Fosamax and alleged onset of ONJ prior to the July 2005 label change. As a result, issues that could arise in cases with post-July 2005 claimed injury dates or commencement of Fosamax use have not been litigated in this MDL.

The Court believes it is necessary to conduct two additional bellwether trials involving issues not yet litigated,

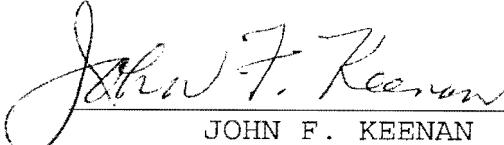
before considering remand of the MDL to the transferor courts. Therefore, the Court directs the Plaintiffs' Steering Committee and Merck to confer and to select, by April 15, 2011, two cases to be tried as additional bellwethers. One case must involve Fosamax use beginning before the July 2005 label change with a claimed onset of injury after the July 2005 label change. The other case must involve commencement of Fosamax use and a claimed injury date that both post-date the July 2005 label change.

In the event that the parties cannot agree on the case selected for either or both of the above categories, each party must propose, by letter to the Court, three cases for each category of cases on which they have failed to agree. The Court will then randomly select one bellwether case from the six total proposed cases for each unresolved category and promptly inform the parties of its selection.

The parties are directed to submit to the Court by May 13, 2011, a proposed case management order setting a schedule for discovery in the cases selected.

**SO ORDERED.**

Dated:      New York, New York  
                February 4, 2011

  
\_\_\_\_\_  
JOHN F. KEENAN  
United States District Judge